IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 23887 of 2006

DATED: 11.10.2006

Between:
P.Kasulu petitioner

And

The Depot Manager,
APSRTC,
Tuni, East Godavari district and ors respondents

-
-

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 23887 of 2006

ORAL ORDER:

The present writ petition is filed questioning the award passed by the Industrial Tribunal cum Labour Court, Visakapatnam in I.D. No. 45 of 2003 dated 31.10.2005.

The petitioner herein was employed in the respondent corporation as sweeper. While so, he was issued with a charge sheet dated 11.8.1998 alleging unauthorised absence from duty from 27.4.1998 to 11.8.1998 for 107 days. The petitioner submitted his explanation stating that he was suffering from nerves disorder and advised bed rest. Having not satisfied with the explanation offered by the petitioner, an enquiry was ordered. The enquiry officer on conducting the enquiry submitted his report dated 22.4.1999 holding the charge of unauthorised absence as proved. Thereafter, the petitioner was issued with a show cause notice of removal, however with the intervention of the labour union and the undertaking given by the petitioner that he will attend the duties properly, he was permitted to join the duty. But before passing final orders in the matter, the petitioner once again unauthorisedly absented from duty from 7.12.199 to 19.12.1999 and again from 17.2.2000 to 21.2.2000, hence, he was dismissed from service by order dated 21.2.2000. The appeal and review filed by the petitioner were dismissed and ultimately the petitioner raised an industrial dispute and the same was registered as I D No. 45 of 2003. The labour Court on consideration of the matter, passed an award dated 31.10.2005 dismissing the petition. Hence, the present writ petition.

Heard learned counsel for petitioner, learned Standing Counsel for respondent corporation and perused the award under challenge.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of Certiorari are limited to—firstly to correct errors of jurisdiction when the inferior Court

or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. The law is well settled that this Court does not act as an appellate authority and reappraise the evidence while exercising certiorari jurisdiction. It is within these parameters, the impugned award of the Labour Court, is to be examined.

In the present case, the petitioner was dismissed from service on the ground of unauthorized absence from duty and the labour Court taking into consideration the documentary evidence available on record, recorded a finding that the petitioner was habituated to unauthorized absence from duty and his conduct as per the record would show that there is no change in his attitude. Since the charge of unauthorized absence is proved in the domestic enquiry conducted by the respondent management and the validity of the enquiry was not challenged, the only point for consideration before the Labour Court is whether the punishment of dismissal from service is proportionate to the charge leveled against the petitioner. The labour Court having recorded a finding that the petitioner is habitual absentee and following the decisions in **BRIHAN MUMBAI MUNICIPAL CORPORATION Vs THE GENERAL SECRETTARY, BEST WORKERS UNION** [1] **and PURATCHI TALIVAR MGR TRANSPORT CORPORATION LIMITED Vs. INDUSTRIAL TRIBUNAL & ANOTHER**[2] passed an award confirming the punishment of dismissal from service. Admittedly, the petitioner in the disciplinary proceedings initiated against him for his unauthorized absence from 27.4.1998 to 11.8.1998 for 107 days has given an undertaking that he will not absent himself unauthorisedly and having regard to the said undertaking and at the intervention of the labour union, the respondent corporation permitted him to join the duty, but, even after giving such an undertaking and even before the proceedings initiated against him were closed by the respondents, the petitioner once again unauthorisedly absented from duty. In those circumstances, the disciplinary authority dismissed the petitioner from service. The Labour Court, having regard to the evidence available on record and the attitude of the petitioner, has rightly declined to interfere with the punishment of dismissal from service. The Apex Court in

REGIONAL MANAGER, RAJASTHAN SRTC Vs SOHAN LAL[3], **DIVISIONAL CONTROLLER, KSRTC (NWKRTC) Vs. A.T.MANE**[4], held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. The petitioner has not made out a case so as to take a different view from the one taken by the Labour Court, based on evidence available on record.

For the foregoing reasons, the writ petition fails and accordingly, the same is dismissed. No costs.

_____

N.V.RAMANA, J

11.10.2007

TVK

64

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 23887 OF 2006

DATED: 11.10.2007

---

[1] 1999 LLR 232

[2] 2004 LLJ PAGE 876 (Madras)

[3] (2004) 8 SCC 218

[4] 2005 (3) SCC 254